

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:) Case No. 16-39654
) (Jointly Administered)
ARGON CREDIT, LLC, *et al.*,)
) Chapter 7
Debtors.)
) Hon. Deborah L. Thorne
)) Hearing Date: October 15, 2020 at 9:00 a.m.
)

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on October 15, 2020 at 9:00 a.m., I will appear before the Honorable Deborah L. Thorne, or any judge sitting in her place, and present the *Motion for Entry of an Order: (I) Pursuant to Bankruptcy Rule 9019 Approving Settlement with Fund Recovery Services, LLC, and (II) Approving Payment of Contingency Fee*. Parties-in-interest may obtain a complete copy of the Motion by contacting undersigned counsel.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID and password for this hearing will be provided by chambers at a later date. These credentials can also be found on the judge's page on the court's web site, at <https://www.ilnb.uscourts.gov/content/judge-deborah-l-thorne>.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Dated: September 24, 2020

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Elizabeth L. Janczak
One of Her Attorneys

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NORTHERN DISTRICT OF ILLINOIS
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ARGON CREDIT, LLC, *et al.*,)
) Chapter 7
Debtors.)
) Hon. Deborah L. Thorne
)) Hearing Date: October 15, 2020 at 9:00 a.m.
)

CERTIFICATE OF SERVICE

I, Elizabeth L. Janczak, an attorney, hereby certify that on September 24, 2020, I caused a true and correct copy of the foregoing *Notice of Motion and Motion for Entry of an Order: (I) Pursuant to Bankruptcy Rule 9019 Approving Settlement with Fund Recovery Services, LLC, and (II) Approving Payment of Contingency Fee*, to be filed with the Court and served upon the following parties by the manners listed.

/s/ Elizabeth L. Janczak

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(u)Margin LLC, Mark Triffler, Pete Ferro and

(u)Mark Triffler Declaration of Trust

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	Case No. 16-39654
)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
)	Chapter 7
Debtors.)	
)	Hon. Deborah L. Thorne
)	
)	Hearing Date: October 15, 2020 at 9:00 a.m.
)	

**MOTION FOR ENTRY OF AN ORDER: (I) PURSUANT TO BANKRUPTCY RULE
9019 APPROVING SETTLEMENT WITH FUND RECOVERY SERVICES, LLC,
AND (II) APPROVING PAYMENT OF CONTINGENCY FEE**

Karen R. Goodman (the “*Trustee*”), the chapter 7 Trustee in the above captioned cases, by and through her undersigned counsel, hereby submits this motion (the “*Motion*”) to this Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of an order approving settlement between the Trustee and Fund Recovery Services, LLC (“*FRS*”) and approving payment of the contingency fee owed to Freeborn & Peters LLP (“*Freeborn*”). In support of the Motion, the Trustee states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1408.
3. The predicate for the relief requested in this Motion is Bankruptcy Rule 9019.

BACKGROUND

I. General Case Background

4. On December 16, 2016 (the “*Petition Date*”), Argon Credit, LLC (“*Argon Credit*”) and Argon X, LLC (“*Argon X*,” together with Argon Credit, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the “*Bankruptcy Code*”).

5. On January 11, 2017, the *Debtors*’ bankruptcy cases were converted from cases under chapter 11 to cases under chapter 7.

6. Deborah K. Ebner was appointed the interim chapter 7 trustee of the *Debtors*’ estates, but resigned on April 17, 2017.

7. Eugene Crane was appointed as interim chapter 7 trustee on April 17, 2017 and confirmed by the Court on July 6, 2017.

8. On July 11, 2017, the Court entered an order authorizing Eugene Crane, as chapter 7 trustee, to employ Freeborn as special counsel to, among other things, pursue chapter 5 causes of action on a contingency fee basis. (ECF No. 207). Pursuant to the court-approved terms of Freeborn’s engagement, Freeborn is entitled to a contingency fee of: (i) 30% of the cash value of the settlement prior to filing a lawsuit (the “*Pre-Suit Contingency Fee*”) or 40% of the cash value of the settlement after filing a lawsuit (the “*Post-Suit Contingency Fee*,” together with the Pre-Suit Contingency Fee, the “*Settlement Amount Contingency Fee*”), (ii) plus the cash equivalent value of any claim waiver obtained (the “*Claim Waiver Contingency Fee*”).

9. On June 1, 2020, the Trustee was appointed as the successor chapter 7 trustee after Mr. Crane’s resignation.

10. On July 30, 2020, the Court entered an order authorizing the Trustee to retain Freeborn on the same terms as previously approved with respect to Mr. Crane. (ECF No. 505).

II. The FRS Settlement

11. FRS was Argon X's pre-petition secured lender which loan was secured by substantially all of Argon X's assets and guaranteed by Argon Credit. The loan was originally made by Fintech Financial, LLC ("Fintech") who agreed to sell, assign, and transfer all of its rights under the loan agreement to Princeton Alternative Income Fund, LP ("Princeton"). The loan agreement was subsequently amended twice and increased the maximum credit available to \$37.5 million.

12. On December 7, 2016, Princeton assigned its rights in the loan agreements to FRS.

13. Argon Credit, the unsecured guarantor, made certain pre-petition transfers to or for the benefit of FRS totaling \$239,617.47 which the Trustee contends are avoidable and recoverable under chapter 5 of the Bankruptcy Code (the "Avoidance Claims").

14. On December 29, 2016, FRS filed a proof of claim against Argon X as Claim No. 1, which was subsequently amended to assert a secured claim against Argon X in the amount of \$37,291,193.98 (the "FRS-Argon X Proof of Claim") and against Argon Credit as Claim No. 1, which was subsequently amended to assert a general unsecured claim against Argon Credit in the amount of \$37,291,193.98 (the "FRS-Argon Credit Proof of Claim" together with the FRS-Argon X Proof of Claim, the "FRS Proofs of Claim").

15. On May 30, 2017, Princeton filed a proof of claim against Argon Credit as Claim No. 19 and against Argon X as Claim No. 2 in unliquidated amounts for alleged fraud, misrepresentation, and civil conspiracy (the "Princeton Proofs of Claim").

16. FRS is the successor-in-interest to the Princeton Proofs of Claim.

17. The Trustee and FRS entered into numerous tolling agreements which tolled all applicable statutes of limitations with respect to, among other things, the Avoidance Claims.

18. FRS disputes the Trustee's Avoidance Claims and the Trustee has raised certain issues with respect to the amount of the FRS Proofs of Claim and the validity of the Princeton Proofs of Claim.

19. The Trustee and FRS have exchanged information, negotiated, and have agreed to settle their disputes. To that end, the parties entered into a settlement agreement (the "*Settlement Agreement*") fully resolving the parties' disputes. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

20. The relevant terms of the Settlement Agreement are summarized as follows:¹

- FRS shall pay the Trustee the sum of \$75,000.00 (the "*Settlement Sum*") in full satisfaction of the Avoidance Claims (as defined in the Settlement Agreement).
- FRS shall waive the Princeton Proofs of Claim and any claim arising under section 502(h) of the Bankruptcy Code.
- The parties agree that the balance owed to FRS as of the Petition Date on account of the FRS Proofs of Claim is \$37,261,681.33 (a reduction of \$29,512.65). The Trustee shall retain the right to object to the amount of the FRS Proofs of Claim based upon FRS' receipt and application of collateral proceeds collected since the Petition Date, FRS' inclusion of improper fees, interest, or costs, and that such objection shall not be subject to any deadline or time restrictions other than those generally applicable to other proofs of claim filed against the Debtors.
- The Trustee, on behalf of the Debtors' estates, shall release FRS from all claims arising on or before the date of the Settlement Agreement.

¹The discussion of the settlement with FRS set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Settlement Agreement to understand the entire scope of the parties' agreements. In the event of any discrepancy, the terms of the Settlement Agreement shall govern.

RELIEF REQUESTED

21. By this Motion, the Trustee seeks entry of an order approving the Settlement Agreement pursuant to Bankruptcy Rule 9019(a) and entry of an order approving the Settlement Amount Contingency Fee owed to Freeborn.

A. Approval of the Settlement Agreement

22. Pursuant to Bankruptcy Rule 9019(a), “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Such settlements should be approved by a court if they are fair and reasonable and in the best interests of the debtor’s estate. *See Depoister v. Mary M. Halloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994) (“In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.”) (internal citations omitted); *In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992) (holding that Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if “the settlement is in the best interests of the estate”); *In re Energy Coop., Inc.*, 886 F.2d 921, 926-27 (7th Cir. 1989) (providing that “[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate”); *In re Griffen Trading Co.*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001), *aff’d*, 270 B.R. 905 (N.D. Ill. 2001) (citing *LaSalle Nat'l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987)).

23. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000) (“Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding – the expenses of administering the bankruptcy often consume most or even all of the bankrupt’s assets.”); *Meyers v. Martin (In re*

Martin), 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy.”); *In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986).

24. The Court should grant a trustee’s request for approval of a settlement except in the very limited circumstance where a proposed settlement “falls below the lowest point in the range of reasonableness.” *Energy Coop.*, 886 F.2d at 929; *Official Comm. of Unsecured Creditors of Artra Group, Inc. v. Artra Group, Inc. (In re Artra Group, Inc.)*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) (same); *In re Rimsat, Ltd.*, 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997) (providing that the court is required only “to canvas the issues in order to determine whether the settlement falls below the lowest point in the range of reasonableness”); *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994).

25. In determining whether a proposed settlement is appropriate, neither an evidentiary hearing nor a rigid mathematical analysis is required. *Depoister*, 36 F.3d at 586, 588 (evidentiary hearing not required); *In re Energy Coop.*, 886 F.2d at 928-29 (rigid mathematical analysis of settlement values not required); *In re Am. Reserve Corp.*, 841 F.2d at 163 (mini-trial not required). Rather, the Seventh Circuit offers the following guidelines:

Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.

Am. Reserve Corp., 841 F.2d at 161 (citations omitted).

26. The Settlement Agreement satisfies this standard. FRS has agreed to pay \$75,000, which is approximately 30% of the total Avoidance Claim demand. It has also agreed to partially reduce the FRS Proofs of Claim and waive the Princeton Proofs of Claim which asserted claims for fraud, misrepresentation, and civil conspiracy.

27. The Trustee submits that this settlement is well within the reasonable range of possible litigation outcomes taking into account the defenses FRS has raised, the information it has provided in support of those defenses, and the value of the waiver of the Princeton Proofs of Claim. In particular, FRS raised certain defenses under section 547(c) of the Bankruptcy Code and disputed the Trustee's ability to recover the transfers under section 550(a) of the Bankruptcy Code. The Trustee believes that the Settlement Sum represents a reasonable resolution of the Avoidance Claims in light of these defenses. Additionally, it avoids the costs of litigation which may be substantial and could significantly reduce or eliminate any recovery, particularly given the amount at issue.

28. This settlement allows the Trustee to avoid the uncertainty associated with litigation while maximizing the value of the Debtors' estates for the benefit of their creditors. Accordingly, the Trustee submits that the Court should approve the Settlement Agreement pursuant to Bankruptcy Rule 9019(a).

B. Approval of the Settlement Amount Contingency Fee

29. The Trustee also requests approval to pay Freeborn the Settlement Amount Contingency Fee per the terms of Freeborn's retention of which Freeborn is entitled to a Pre-Suit Contingency Fee of 30%.²

30. The Trustee submits that Freeborn is entitled to the Settlement Amount Contingency Fee totaling \$22,500.00 calculated as follows:

²The Trustee is not requesting payment of any Claim Waiver Contingency Fees at this time, but reserves the right to request authority to pay such fees in the future.

Transferee	Settlement Amount	Settlement Amount Contingency Fee Owed
FRS	\$75,000.00	\$22,500.00

31. Accordingly, the Trustee requests that the Court approve, on an interim basis, payment to Freeborn of \$22,500.00 from the settlement proceeds, representing the total Settlement Amount Contingency Fee owed from the settlement.

NOTICE

32. The Trustee has served notice of this Motion on the Debtors, U.S. Trustee, and all creditors pursuant to Bankruptcy Rule 2002 and stated that copies of the complete Motion may be obtained from counsel for the Trustee upon request. The Trustee submits that such notice is appropriate under the circumstances.

WHEREFORE, the Trustee respectfully requests that the Court enter an order: (i) approving the Settlement Agreement with FRS, (ii) approving payment to Freeborn, on an interim basis, of \$22,500.00 representing the total Settlement Amount Contingency Fee, and (iii) granting such other and further relief as this Court deems just and proper.

Dated: September 24, 2020

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Elizabeth L. Janczak
One of Her Attorneys

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